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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4532 OF 1993

Naigaon Education Society & anr. ... Petitioners

V/s

Shri M.S. Bhavar & ors. ... Respondents

Mr. P.N. Shastri for the petitioners.

Mr. P.K. Hushing for the respondent No.1.

Mr. S.K. Chinchalikar, A.G.P. for Resp. Nos. 2 & 3.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 9TH AUGUST, 2007.

ORAL JUDGMENT:

1. This petition challenges the order of the School Tribunal granting reinstatement with continuity of service and full back wages to the respondent No.1. The respondent No.1 was appointed as a Library Attendant on 9.9.1989 and worked as such till 28.2.1990. An advertisement was issued by the petitioners inviting applications for the post of Library Attendant. The respondent No.1 appeared for an interview and was selected. He was issued an appointment order on 1.4.1990. According to the petitioners, respondent No.1 discontinued attending the school w.e.f. 23.2.1992. On

the other hand, it is the case of the respondent No.1 that his services were terminated by the petitioners and instead of continuing him as a Library Attendant pursuant to the appointment order of 1.4.1990, he was issued an order of appointment as a Peon. It was the case of the respondent No.1 that the petitioners could not appoint him as a Peon having selected him as a Library Attendant.

2. Aggrieved by the orders of the petitioners, the respondent No.1 approached the College Tribunal contending that he had been reduced in rank since he was made to work as a Peon instead of appointing him as a Library Attendant for which post he was selected. In the alternative, it was also contended by the first respondent that his services have been illegally terminated as a Peon.

3. The Tribunal, on a consideration of the evidence before it, held that the petitioners had not acted in accordance with law while terminating his services. The Tribunal found that the petitioners could not terminate the services of the first respondent by contending that no approval was granted to his appointment by respondent No.3. The Tribunal further held that the petitioners violated the provisions of the Maharashtra Universities

Act by treating him as a Peon. The Tribunal was of the view that the petitioners had reduced the first respondent in rank and, therefore, set aside that order of the petitioners and reinstated the respondent No.1 as a Library Attendance with continuity of service and back wages.

4. The petitioners have impugned the judgment of the College Tribunal on several grounds. The principle grounds are that, the appointment order was issued to the first respondent as a Peon and he had worked with the petitioners in that capacity; and his appointment was not approved by the authorities necessitating his termination from service of the respondent No.1. The approval was not granted only on the ground that the first respondent was overage when he was initially appointed. It is further submitted that assuming the first respondent is to be reinstated with continuity of service, he was not entitled to back wages as he has been gainfully employed during the intervening period i.e. the period from the date of his termination till the date of the order of the College Tribunal.

5. When the petition was admitted, this Court, had passed the following order :-

> ".....That the respondent State is directed to consider this issue regarding the correct birth date of the respondent No.1 on the basis of extract from the Birth and Death Register of Panchayat Samiti, Muggaon, Tal. Patoda, Dist. Beed. Such a decision to be taken after hearing the respondent No.1. It is agreed that the Authority to decide the issue will be the Director of Education. The Director of Education to determine the issue on the basis of material shown to him by the respondent No.1 and after hearing respondent No.1 on or before 12th April 1994 and submit a report in that behalf to this Court through the Additional Government Pleader, High Court, Bombay. Matter to stand over till 12th April, 1994."....."

6. Now the report has been received by this Court and it is found that the date of birth of respondent No.1 is 28.7.1963 and not 11.4.1961 as recorded by the Education Officer. Thus, he was eligible to be appointed as a Peon.

7. The only reason given by the 3rd respondent for refusing the approval to the appointment of respondent No.1 as a Peon is that, his age was not within the

prescribed limit. In the affidavit filed by the third respondent also it has been stated, "the services of the respondent No.1 were not approved since he was age barred and not on the ground that he was "in excess". Thus, if the only reason for not employing the respondent No.1 was that he had crossed the age limit and today it is found that his date of birth was 28.7.1963, it is obvious that the reason for refusal of approval was incorrect.

7. The third respondent ought to have granted approval to the appointment of the respondent No.1 when the application was made by the petitioners from the period 1989-90.

8. However, if the approval is granted only for the appointment of the respondent No.1 as a Peon, he will not be entitled to be appointed as a Library Attendant. The order of the Tribunal to that effect is incorrect. The first respondent would be entitled to be reinstated as a Peon w.e.f. 1.4.1990. The third respondent shall grant approval to his appointment from that date.

9. The other issue which is to be considered is, whether the petitioners are liable to pay back wages to the first respondent. Affidavits have been filed by the

petitioners as well as the respondent No.1 on this issue. According to the petitioners, the respondent No.1 was gainfully employed, while he contends to the contrary.

10. In my view, it would be appropriate to remand the matter back to the Tribunal to decide the issue regarding back wages. The Tribunal shall decide the issue within a period of three months from today after giving an opportunity to both the petitioners as well as the first respondent. All parties to lead evidence in that behalf.

11. The earned salary of the respondent No.1 shall be remitted to the respondent No.1 within four weeks from today.

12. Rule made absolute partly. No costs.

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